

INSTRUCTIONS FOR USE OF MODEL REAL ESTATE SALE ORDER AND
FINDINGS PREPARED BY THE INSOLVENCY LAW COMMITTEE OF THE
BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

The Insolvency Law Committee of the Business Law Section of the State Bar of California (“ILC”) prepared a model order and findings for court approval of the sale of real property in a bankruptcy case. The model order and findings were prepared with the consultation and cooperation of counsel for title companies which handle the escrows for real property sales. Effective December 1, 2002, Federal Rule of Civil Procedure 58, incorporated by Federal Rule of Bankruptcy Procedure 9021, provides that the time of entry of a judgment if the Rule 58 requirement of a separate document is not complied with is 150 days from entry in the docket. Thus, the previous draft of the model order and findings has been separated into two documents to comply with Rule 58. The task of separating the order and findings into two documents was not intended to make any substantive change.

The order and findings contain many of the provisions required by the title companies, the Bankruptcy Code, and buyers. As with all sample forms, counsel is cautioned to carefully review the order and findings and revise them as appropriate for use in each specific case.

The order and findings also must be supported by appropriate evidence. For example, counsel cannot submit a finding that the motion was served on all creditors unless the motion was in fact so served. Further, counsel should not submit a finding that the purchaser will be a buyer in good faith within the meaning of section 363(m), unless sufficient evidence has been submitted to support such a finding. See e.g., *In re Automation Solutions International, LLC*, 274 B.R. 527 (Bankr. N.D.Cal. 2002).

Counsel should consult the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, court local rules and all other applicable statutes and rules, as well as with the title company involved in the particular transaction, as to the appropriateness of these forms and any necessary changes that should be made. For example, the ILC understands that the U.S. Bankruptcy Court for the Northern District of California is in the process of developing a standard form of order for all sale motions.